



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

*mw*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/117,447	12/02/98	LUBITZ	W P564-8013

HM12/0802  
ARENT FOX KINTNER PLOTKIN & KAHN PLLC  
1050 CONNECTICUT AVENUE, N.W.  
SUITE 600  
WASHINGTON DC 20036-5339

EXAMINER

MINNIFIELD, N

ART UNIT	PAPER NUMBER
----------	--------------

1645

*9*

DATE MAILED: 08/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**BEST AVAILABLE COPY**

# Office Action Summary

Application No.  
09/117,447

Applicant(s)

LUBITZ ET AL

Examiner

N. M. Minnifield

Group Art Unit  
1645

☒ Responsive to communication(s) filed on May 26, 2000

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-17, 19-24, 26, 28-30, 32-34, and 37-57 is/are pending in the application

Of the above, claim(s) 21-24, 26, 33, 34, 48-51, and 54-57 is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-17, 19, 20, 28-30, 32, 37-47, 52, and 53 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1645

## DETAILED ACTION

1. Applicant's election without traverse of Group I, claims 1-17, 19, 20, 28-30, 32, 37-47, 52 and 53, in Paper No. 8 is acknowledged.

2. Upon further review the following species election is set forth for Group I.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Claims 1-17, 19, 20, 46 and 47 directed to SbsA-S-layer protein SEQ ID NO:1.

Claims 28-30, 32, 37-47, 52 and 53 directed to SbsB-S-layer protein SEQ ID NO:5

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an

Art Unit: 1645

election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MEP. § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claims 1-17, 19, 20, 46 and 47 directed to SbsA-S-layer protein SEQ ID NO:1.

Claims 28-30, 32, 37-47, 52 and 53 directed to SbsB-S-layer protein SEQ ID NO:5

The following claim(s) are generic: Claims 1-17, 19, 20, 46 and 47.

A telephone call was made to Monica Chin Kitts (on Maternity Leave) on August 1, 2000 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected

Art Unit: 1645

invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is (703) 305-3394. The examiner can normally be reached on Monday-Thursday from 7:00 AM-4:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette R. F. Smith, can be reached on (703) 308-3909. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

N. M. Minnifield

August 1, 2000

  
NITA MINNIFIELD  
PRIMARY EXAMINER